

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

04-CR-6128L

v.

JOSE CASTILLO-MARTINEZ, et al.,

Defendants.

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This Court referred all pretrial matters in this criminal case to United States Magistrate Judge Marian W. Payson pursuant to 28 U.S.C. § 636(b). In due course, defendants Frank Rijo (“Rijo”) and two others, Maria Carpio (“Carpio”) and Gerardo Ortiz (“Ortiz”) filed various motions. Magistrate Judge Payson issued a thorough, 28-page Decision and Order/Report and Recommendation dealing with the motions filed by Rijo and the co-defendants.

Pending before the Court is defendant Rijo’s objections to Magistrate Judge Payson’s Report and Recommendation. Magistrate Judge Payson denied Rijo’s motion to suppress certain statements made by Rijo. Magistrate Judge Payson also denied Rijo’s motion to suppress statements obtained pursuant to two wiretap orders: one signed by Monroe County Court Judge Patricia Marks and a second by Monroe County Court Judge Frank Geraci. According to the applications, both of the affected telephone lines (cellular telephones) were believed to be utilized by co-defendant Juan

Castillo-Martinez (“Castillo-Martinez”). During the intercept, at least three conversations were intercepted between Castillo-Martinez and Rijo.

**WIRETAP COMMUNICATIONS:**

Rijo claims that Magistrate Judge Payson erred in finding probable cause for issuance of the wiretap orders. He also claims that Magistrate Judge Payson erred in concluding that the applicants had demonstrated that other investigative techniques had been exhausted. Rijo claims that Magistrate Judge Payson erred in determining that the police had taken steps to minimize the intercepted communications. After reviewing the material presented to Magistrate Judge Payson, as well as her thorough Report and Recommendation and the objections filed to it, I find no basis to reject or modify Magistrate Judge Payson’s recommendation denying the motion to suppress communications obtained via the wiretap warrants.

Magistrate Judge Payson discusses the arguments now made by Rijo at pages 12-23 of the Report and Recommendation. I believe that Magistrate Judge Payson has carefully and accurately summarized the facts in this case and has also correctly set forth the appropriate legal standards governing issuance and maintenance of wiretaps. I find, as did Magistrate Judge Payson, that there was ample probable cause to support the applications, that traditional investigative techniques had been attempted and had proven, to some degree, unsuccessful and that there was proper minimization during execution of the warrants. I also agree with Magistrate Judge Payson that Rijo failed to establish any protected privacy interests in the lines tapped pursuant to court order. In sum, I believe that Magistrate Judge Payson considered all of the issues in her thorough Report and Recommendation and find no basis to reject them.

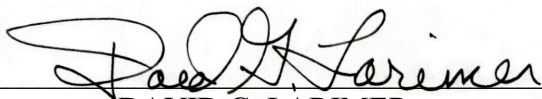
**STATEMENTS OF DEFENDANT:**

Rijo objects to Magistrate Judge Payson's decision that there was insufficient reason to hold a suppression hearing concerning certain statements Rijo allegedly made on the street to two individuals identifying themselves as immigration officers. Magistrate Judge Payson set forth the basis for her decision at pages 23-26 of her Report and Recommendation. Based on Rijo's belatedly-submitted affidavit and the other evidence, I agree with Magistrate Judge Payson that there was no basis to conduct a suppression hearing. The statements at issue were made during a simple encounter by two law enforcement officers with Rijo. There is no evidence that Rijo was in custody and there is no reason to explore whether *Miranda* warnings should have been given. I believe Magistrate Judge Payson sets forth the law in this area, and I agree with her that no suppression hearing need have been conducted based on the facts alleged by Rijo in support of the motion.

**CONCLUSION**

I accept and adopt the Report and Recommendation (Dkt. #279) of United States Magistrate Judge Marian W. Payson concerning the several motions filed by defendant Frank Rijo. Defendant Rijo's motion to suppress oral communications obtained by means of wiretap warrants is denied. Defendant Rijo's motion for a suppression hearing concerning oral statements is also denied.

IT IS SO ORDERED.

  
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DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
October 26, 2006.